



January 27, 2012

Mr. Horst Greczmiel
Associate Director for NEPA Oversight
Council on Environmental Quality
722 Jackson Place, NW
Washington, DC 20503

Submitted to: <http://www.whitehouse.gov/administration/eop/ceq/initiatives/nepa>

Re: Draft Guidance on Improving the Process for Preparing
Efficient and Timely Environmental Reviews Under NEPA

Dear Mr. Greczmiel:

The Edison Electric Institute (EEI) is submitting these comments to the Council on Environmental Quality (CEQ) in response to CEQ's notice of availability of the above-referenced draft guidance under the National Environmental Policy Act (NEPA). CEQ published the notice at 76 Fed. Reg. 77492 on December 13, 2011, and invited comments by today.

I. EEI and Its Members Have a Direct Interest in the Proposed Guidance

EEI is the association of shareholder-owned electric utilities in the United States, international affiliates, and industry associates worldwide. Our members serve 95 percent of the ultimate customers in the shareholder-owned segment of the industry and represent approximately 70 percent of the U.S. electric power industry.

EEI members often need various federal authorizations, such as federal land use and environmental permits, to build, operate, and maintain electricity generation, transmission,

and distribution facilities. In addition, EEI members can be affected by other federal agency actions, such as energy, fuel, land, and water resource planning, and federal financial assistance. These federal agency permitting, resource, and financing activities typically require NEPA reviews.

The NEPA review process often is unnecessarily time consuming and takes substantial funds and staff to complete. Moreover, delays in the process can affect the overall schedule, cost, and viability of a project. Even for a relatively simple proposed action, preparing an environmental assessment (EA) can take months or years and tens or hundreds of thousands of dollars. An environmental impact statement (EIS) can take many years and millions of dollars. Therefore, EEI and our members have a direct interest in the draft guidance for improving the federal agency NEPA review process.

II. EEI Supports CEQ's Proposals to Streamline the NEPA Process, With Some Suggestions

EEI supports careful environmental analysis and steps to avoid or to mitigate environmental impacts of federal agency actions, including permitting decisions. At the same time, in the interest of ensuring the timely development of needed electric infrastructure and providing reliable and affordable supplies of electricity, we also support making the environmental review process under NEPA and other federal laws as streamlined, efficient, and reasonable as possible.

For this reason, we appreciate and support CEQ's proposed guidance for improving the NEPA review process. As CEQ has recognized throughout the proposed guidance, many of the suggestions that the guidance offers are already reflected in CEQ's NEPA regulations.

A. Agencies Should Select the Appropriate Level of Review

EEI supports CEQ's advice that agencies should use the appropriate level of NEPA review for a given federal agency action, recognizing that the action may qualify for a categorical exclusion (CE) with relatively little additional review under NEPA, or if not may require only an EA that can conclude in a "finding of no significant impact" (FONSI). EISs should be reserved for projects with truly significant impacts that warrant such a thorough level of review.

Consistent with this framework, in April 2010, EEI filed comments on CEQ's proposed CE guidance. We supported federal agencies identifying as CEs any types of their activities that do not have significant environmental impacts. By thus using their programmatic experience in implementing NEPA as to their activities for more than 30 years, agencies can avoid the need for unnecessary project-specific NEPA reviews.

B. Agencies Should Use Scoping to Focus their NEPA Reviews

If an EA or EIS is required, EEI supports CEQ's advice to use a scoping process – in dialogue with other agencies and, if a permit application is involved, the applicant – to determine which issues most merit attention in the NEPA review. We also agree with CEQ that EAs and EISs should focus most on the highest priority issues, and only briefly in passing on less significant issues.

We encourage CEQ to modify its advice in footnote 48 that if, after preparing an EA, an agency determines an EIS is needed, the agency generally must undertake a new round of scoping. Instead, CEQ should advise agencies to indicate when first undertaking scoping that the scoping will be used for the entire NEPA review, whether the review concludes with an EA or an EIS. In turn, agencies should be able to rely on a single round of scoping for

both the EA and if one is prepared the EIS. A second round of scoping should be necessary only in unusual circumstances, for example if earlier scoping in a particular case did not involve sufficient opportunity for public input. The point is, scoping is meant to identify the issues warranting consideration as part of the NEPA review, whatever form that review takes. Requiring agencies to revisit scoping in most cases where an EIS is prepared, after having already undertaken scoping earlier in the review process, is inappropriate.

C. Agencies Should Tier Reviews

We agree with CEQ's reminder that agencies should tier their NEPA reviews, building on prior analyses rather than starting each review over from the beginning. We also appreciate CEQ's advice that agencies may be able to conclude NEPA reviews by issuing *errata* to a draft EA or EIS if only minor changes are involved, rather than having to reissue a largely unchanged document in its entirety as a final EA or EIS.

D. Agencies Should Coordinate on Consolidated Reviews

We support CEQ's call for federal agencies to coordinate with other federal, state, local, and tribal agencies, when other such agencies are involved in reviewing or permitting a proposed action. We agree that environmental reviews under NEPA and other laws should generally be concurrent and agencies should avoid unnecessary duplication. Consistent with CEQ's NEPA regulations, when multiple agencies are involved, one should be identified as the lead agency (or in unusual cases, multiple agencies should be identified as coordinating lead agencies), and others should work cooperatively with that agency (or those agencies) to conduct consolidated, streamlined, timely reviews.

As a good model, Federal Power Act (FPA) section 216(h) directs the Department of Energy (DOE) to act as lead agency for the coordination of all federal authorizations and

associated environmental reviews related to electric transmission facilities. Congress enacted this provision recognizing that electric transmission facilities are essential infrastructure, can involve long linear rights-of-way, and as a result can require review and approval by multiple federal, regional, state, and local agencies and branches of agencies.

Section 216(h) requires DOE to coordinate all permitting and associated environmental reviews under federal law and, to the maximum extent practicable, to coordinate those federal reviews with any separate reviews by multistate, state, and tribal agencies. DOE is required to prepare a single environmental review document as the basis for all decisions. DOE also must set “prompt and binding intermediate and ultimate deadlines” for the review process and for federal authorization decisions. DOE must ensure that all federal permit decisions and environmental reviews are completed within one year of submission of an application unless precluded by federal law, in which case the decisions and reviews are to be completed as soon as practicable after the one-year deadline.

EEI supported enactment of section 216(h), and we support the section’s goal of streamlining the overall review and decisionmaking process for electric transmission facilities. Properly implemented, such an approach to permit and environmental reviews and decisions can achieve many of the efficiencies that CEQ’s proposed guidance seeks to promote.

EEI encourages CEQ to promote use of the section 216(h) model by federal agencies broadly, not just as to electric transmission facilities. This would be especially helpful when energy facilities and other critical infrastructure are involved.

EEI also encourages CEQ to assist DOE in implementing section 216(h) as to electric transmission facilities, by monitoring and ensuring compliance with the section’s provisions,

in particular as to coordination, use of a consolidated environmental document, and setting and meeting deadlines. CEQ and DOE also could help other agencies improve their decisionmaking and environmental review processes, by sharing lessons learned in the section 216(h) context with other agencies.

E. Agencies Should Set and Honor Prompt Deadlines

EEI appreciates that CEQ's NEPA regulations call on agencies to set time frames for their reviews, in particular at the request of an applicant. But agencies should strive to set prompt NEPA deadlines and milestones in all cases, not just at the request of an applicant, in order to provide affected parties with some certainty as to the time and steps that will be involved. Moreover, to ensure that agencies and other participants in the NEPA review process abide by the deadlines, CEQ should confirm that it would be consistent with NEPA and CEQ regulations for lead agencies to enforce those deadlines, for example by not responding to untimely inputs by other agencies or participants.

Again, in this regard, FPA section 216(h) calls for agencies to make federal permit decisions on electric transmission facilities within one year of receiving an application unless other federal law prevents the agencies from meeting this deadline. CEQ should encourage agencies to adopt this approach more broadly. By judiciously using pre-application scoping, consultation, and analysis, and setting and honoring intermediate and ultimate milestones, agencies should be able to meet a one-year post-application deadline for completing their environmental and other permitting reviews and decisions in most cases.

At the same time, CEQ should caution agencies against unnecessarily expanding the amount of analysis and consultation that must be undertaken before an application is filed, or delaying the filing of an application. The goal should be to streamline the overall federal

review process from start to finish through efficient, consolidated, timely steps, not simply to shorten the post-filing process by pushing more of it to the pre-filing stage.

F. NEPA Review Documents Should Be Concise, Well Supported, and Clear

Lastly, EEI supports CEQ's call for agencies to keep EAs and EISs concise while adequately addressing issues identified during the scoping and draft EA or EIS review process. We appreciate CEQ's reminder that 10-15 pages is generally appropriate for an EA and that, by regulation, EISs should normally be less than 150 pages long. Aiming for concise documents can help to ensure crisp, clear analysis. This in turn can provide a solid foundation for public involvement and agency decisionmaking.

If you have any questions about these comments or need additional information, please contact me at the following phone number or e-mail address. Or contact Richard M. Loughery, Director, Environmental Activities here at EEI, at 202-508-5647 or rloughery@eei.org.

Sincerely,



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